

## REMARKS

Reconsideration is respectfully requested.

## 35 USC §102

The Examiner has rejected Claims 1, 4, 5, and 7 under 35 USC §102, as allegedly being anticipated by Goncalves (US 4,143,431).

The courts have ruled that "A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). Also, "The identical invention must be shown in as complete detail as is contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989).

Applicant respectfully submits that the Examiner has failed to establish a prima facie case of anticipation under 35 USC §102 since the Goncalves reference does not teach each and every element of Applicant's claims. Specifically, the Goncalves reference does not teach nor enable a device which can "block egress of significantly-sized tablet-portions" as taught and defined in Applicant's specification. The ribs of the Goncalves basket clearly would not block egress of significantly-sized tablet-portions. Thus, it is respectfully submitted that rejection of Claim 1 (and all Claims dependent thereon) should be withdrawn.

Further, Applicant has amended Claim 1 to even more clearly distinguish Applicant's invention from the prior art references. The Goncalves reference does not teach nor enable a device "wherein said plurality of orifices are structured and arranged to substantially block egress of tablet-portions larger than about 1/8-inch diameter from said at least one interior portion of said at least one container."

The Examiner has stated that "the size of the orifices would have constituted an obvious expedient of choice in design depending on what size egress is desired." Applicant respectfully disagrees with the Examiner. Applicant has solved a previously unidentified problem, namely that toilet tank cleaning tablet fragments of significant size can interfere with operation of a toilet. Goncalves (and those of ordinary skill in the art at the time the invention was made) clearly were not aware of the problem since the prior art does not address the issue nor teach a solution.

Further, the Goncalves device is for use in the bowl of the toilet not the tank. This is important because there is *no criticality of size for orifices of devices located in the bowl* since the bowl is designed to accommodate passing solid matter. The tank is NOT designed to pass solid matter (only water) so solid matter, such as tablet fragments of a significant size, can interfere with the flushing apparatus of the toilet, and therefore *size of orifices is critical for a device located in the tank*.

Applicant has demonstrated and taught the criticality of orifice size, whereas the prior art makes no mention. Applicant respectfully submits that for the above reasons the choice of orifice size would not be obvious as suggested by the Examiner. If the Examiner persists with the position that choice of orifice size is obvious Applicant requests that the Examiner provide further evidence and motivation substantiating the position.

For the above reasons, it is respectfully submitted that rejection of Claim 1 (and all Claims dependent thereon) should be withdrawn.

Applicant believes that all Claims, as amended, are now allowable with respect to 35 USC §102 and respectfully request that all such rejections be withdrawn.

### 35 USC §103

The Examiner has rejected Claims 2 and 3 under 35 USC §103, as allegedly being unpatentable over Goncalves (US 4,143,431). Applicant repeats as though fully set forth here the above arguments, especially related to the obviousness of selecting orifice size. It is therefore respectfully submitted that rejection of Claim 2 and 3 (and all Claims dependent thereon) should be withdrawn.

The Examiner has rejected Claims 6 and 8-20 under 35 USC §103, as allegedly being unpatentable over Goncalves (US 4,143,431) in view of Nielson (US 4,416,854).

Applicant repeats as though fully set forth here the above arguments regarding the Goncalves reference.

Applicant has amended Claims 8 and 17 to even more clearly distinguish Applicant's invention from the prior art references. The prior art references do not teach or show "at least one container comprises at least two substantially cylindrical container portions; and said two substantially cylindrical container portions are connected together by at least one hinge" It is therefore respectfully submitted that rejection of Claim 8 (and all Claims dependent thereon) and Claim 17 (and all Claims dependent thereon) should be withdrawn.

Further, Applicant has amended Claim 13 to even more clearly distinguish Applicant's invention from the prior art references. The prior art reference does not teach or enable a device "wherein said plurality of orifices are structured and arranged to substantially block egress of tablet- portions larger than about 1/8-inch diameter from said at least one interior portion of said at least one container." It is therefore respectfully submitted that rejection of Claim 13 (and all Claims dependent thereon) should be withdrawn.

The Federal Circuit has enunciated several guidelines in making a §103 obviousness determination. A prima facie case of obviousness is established when the teachings from the prior art itself would appear to have suggested the claimed subject matter to a person of ordinary skill in the art. *In re Bell*, 991 F.2d 781, 783, 26 USPQ2d 1529, 1531 (Fed Cir. 1993) (quoting *In re Rinehart*, 531 F.2d 1048, 1051 (CCPA 1976)). (Emphasis added). For the Examiner to

establish a prima facie case of obviousness, the Examiner must contend that the teachings from the prior art *itself* or that knowledge generally available to one of ordinary skill in the art would appear to suggest the claimed subject matter to a person of ordinary skill in the art.

It is well settled that to support an obviousness rejection, the prior art must contain some teaching or suggestion to make the modifications suggested by the Examiner. In this regard, the Federal Circuit has stated that "The mere fact that the prior art **may** be modified in the manner suggested by the Examiner does **not** make the modification obvious unless the prior art suggested the desirability of the modification." (emphasis added) *In re Fritch*, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992.)

Further, the Federal Circuit has stated: "It is impermissible to use the claimed invention as an instruction manual or 'template' to piece together the teachings of the prior art so that the claimed invention is rendered obvious. This court has previously stated that "[o]ne cannot use hindsight reconstruction to pick and choose among isolated disclosures in the prior art to deprecate the claimed invention." *In re Fritch*, 972 F.2d 1260, 23 USPQ 2d 1780, 1783-84 (Fed. Cir. 1992.) Applicant respectfully submits that no such suggestion exists in the Nielson reference or the Goncalves reference to so modify or combine the elements to result in the Applicant's claimed invention as suggested by the Examiner. For example, there is no teaching or suggestion within the references to employ the tether of Nielson in lieu of the FIG. 8 hanger 31 of Goncalves, and Applicant respectfully submits that it would not be obvious to do so. Therefore the Examiner has not established a prima facie case of obviousness. If the Examiner persists with the rejection Applicant requests evidence of motivation within the prior art to make such a combination as suggested by the Examiner.

It is therefore respectfully submitted that rejection of Claim 6, Claim 8 (and all Claims dependent thereon) and Claim 13 (and all Claims dependent thereon) should be withdrawn.

Applicant believes that all Claims, as amended, are now allowable with respect to 35 USC §103 and respectfully request that all such rejections be withdrawn.

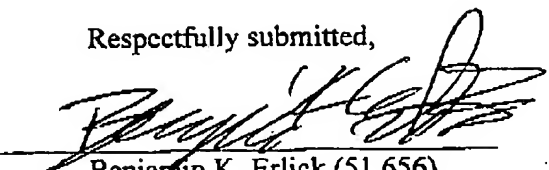
For the reasons given above, and after careful review of all the cited references, Applicant respectfully submits that none of the cited references nor any combination of the cited references will result in Applicant's claimed invention in the present Claims, as amended. But even if any such combination might arguably result in such claimed invention, it is submitted that such combination would be non-obvious and patentable.

If there are any fees incurred by this Amendment Letter, please deduct them from our Deposit Account NO. 50-1887.

Applicant also respectfully requests (not as a matter of form but as a special request in this case) that the Examiner, after having an opportunity to review this paper, grant a telephonic interview to Applicant's undersigned agent in order to discuss the application, the office action and this paper, to attempt to place this application in condition for allowance. Applicant's agent will contact the Examiner to collaborate on scheduling an appropriate time.

Respectfully submitted,

Date: April 13, 2005

  
Benjamin K. Erlick (51,656)  
3113 North 3rd Street  
Phoenix, AZ 85012  
(602) 263-9200  
Agent For Applicant

CERTIFICATE OF FACSIMILE TRANSMISSION

I hereby certify that this correspondence is being transmitted, via facsimile, to the Patent and Trademark Office fax number (703)-872-9306 on April 13, 2005.

Date 4/13/05

Signature:

  
BENJAMIN K. ERLICK, Agent for Appl.